

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

UNITED STATES OF AMERICA

*

VS.

*

CRIMINAL NO. 6:04CR86
(Judge Davis)

PATE AND PATE ENTERPRISES, INC.
PATE AND PATE, LLC, Defendants

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PLEA AGREEMENT

COMES NOW, the United States of America, by and through the United States Attorney for the Eastern District of Texas, and in compliance with Rule 11 of the Federal Rules of Criminal Procedure, would acknowledge the following agreement with PATE AND PATE ENTERPRISES, INC. AND PATE AND PATE LLC, Defendants herein, and Defendants' attorney of record, Michael J. Hinton:

1. The Defendants, PATE AND PATE ENTERPRISES, INC. AND PATE AND PATE LLC, knowing the right to a trial by jury, agree to waive a jury trial and enter a plea of guilty to Count 1 of the Information alleging a violation of Title 29, United States Code, Section 666 (e), which makes it a crime to willfully violate a standard, rule, or order of the Department of Labor, Occupational Safety and Health Administration (OSHA), that causes the death of an employee.
2. Upon conviction of Count 1 of the Information, as described in Paragraph 1, hereinabove, PATE AND PATE ENTERPRISES, INC. AND PATE AND PATE LLC, understand that the maximum penalty the Court can impose for a violation of 29 U.S.C. § 666(e) is:
 - a. a fine not to exceed five-hundred thousand dollars (\$500,000.00);

- b. a term of probation of not more than five (5) years;
 - c. a mandatory special assessment of fifty dollars (\$50.00); and,
 - d. restitution pursuant to Title 18, U.S.C. 3663A(c)(1).
3. The Defendants, PATE AND PATE ENTERPRISES, INC. AND PATE AND PATE LLC, understand that the sentence to be imposed will be in the sole discretion of the Court and such sentence may be up to the maximum provided by law as set forth in Paragraph 2, herein. Because the offense to which PATE AND PATE ENTERPRISES, INC. AND PATE AND PATE LLC, are pleading guilty constitutes a Class B misdemeanor, the Sentencing Guidelines do not apply in this case. *See* 18 U.S.C. § 3559(a)(7) & U.S.S.G. 8A1.1.
4. If the Court imposes a sentence with which the Defendants are dissatisfied, the Defendants will not be permitted to withdraw any guilty plea for that reason alone. In the event that the Court rejects this Plea Agreement, the Defendants will be entitled to the remedies available under Rule 11(c)(5) of the Federal Rules of Criminal Procedure.
5. In view of Defendants' agreement to plead guilty, the Government and Defendants agree that a specific sentence is the appropriate disposition of this case and would respectfully recommend that the Court accept this Plea Agreement and impose the following sentence:
- a. PATE AND PATE ENTERPRISES, INC. AND PATE AND PATE LLC will be fined in an amount to be determined by the Court following a presentence investigation by the Probation Department.
 - b. PATE AND PATE ENTERPRISES, INC. AND PATE AND PATE LLC will be placed on probation for five years. As conditions of probation:
 - i. the Defendants agree that they will not commit a federal, state, or local criminal offense during the time they are on probation;

- ii. For a period of three (3) years, Steve Pate shall inform OSHA of every company that he owns, in whole or in part, for which he serves as an officer, or for which he directs the operations or business activities. Also, and for a period of three (3) years, Steve Pate shall inform OSHA of every company for which he serves as an officer, or for which he directs the operations or business activities that any of his direct family members owns, in whole or in part, or for which they serve as an officer;
 - iii. For each company designated in paragraph ii, Steve Pate shall notify, for a period of three (3) years, the OSHA Regional VI Office of any job site where the company will be actively performing work and such notification shall be made to OSHA in advance of the work activity;
 - iv. for each and every company designated in paragraph ii, company supervisors shall conduct daily site safety inspections which shall be documented;
 - v. for each and every company designated in paragraph ii, a corporate safety officer or consultant shall conduct weekly safety inspections of every job site which shall be documented and made available to OSHA upon request.
6. Defendants agree to withdraw their Notice of Contest in the OSHA civil action styled *Secretary of Labor v. Pate and Pate Enterprises, Inc. and Pate and Pate LLC*, OSHRC Docket number 02-1229. As such, the citations and assessments shall become a final order of the Commission. The parties agree that this constitutes settlement of the OSHA civil action.
7. The Defendants agree to truthfully complete a financial statement form provided by the Office of the United States Attorney and provide such completed form to the United States Attorney


no later than two weeks prior to sentencing. This form shall be used for determination and collection of any fine or restitution to be ordered by the Court.

8. The Factual Resume in this case is true and correct and will be submitted to the Court as evidence. Defendants agree that the Factual Resume legally and factually supports their plea of guilty.
9. The United States Attorney for the Eastern District of Texas agrees not to prosecute the Defendants, any related entity, Steve Pate individually, or any member of the Pate family, in the Eastern District of Texas, for any non-violent offense committed by the Defendants, related entities, or the Pate family, in the Eastern District of Texas arising from the facts and the circumstances of the charge in this case and known to the United States Attorney or derived from information received by the United States Attorney pursuant to this Plea Agreement, other than the offense(s) described in paragraph 1 hereinabove.
10. Except as otherwise provided in this agreement, the Defendants expressly waive the right to appeal their sentence on all grounds, including an appeal of sentencing pursuant to 18 U.S.C. § 3742. The Defendants further agree not to contest their sentence in any post conviction proceeding, including, but not limited to a proceeding under 28 U.S.C. § 2255. The Defendants, however, reserve the right to appeal the following: (a) any punishment imposed in excess of the statutory maximum; (b) any upward departure from the guideline range deemed most applicable by the sentencing court; (c) arithmetic errors in the guidelines calculations; and (d) a claim of ineffective assistance of counsel that affects the validity of the waiver itself. The Defendants knowingly and voluntarily waive their right to appeal in exchange for the concessions made by the Government in this agreement and with full understanding that the Court has not determined his sentence.

11. The Defendants shall be required to pay a \$50 special assessment by cashier's check or money order to the United States District Clerk.
12. Unless otherwise provided, this Plea Agreement is binding only upon the Eastern District of Texas and does not bind any other United States Attorney, nor any state or local prosecutor.
13. The Defendants, Defendants' attorney, and the United States Attorney for the Eastern District of Texas, acknowledge and confirm that this is the entire Plea Agreement which has been negotiated by and between the parties, that it supersedes all other plea agreements, that no other promise has been made or implied by either the Defendants or the Government, and that this agreement is being entered into freely, voluntarily, and upon advice of counsel.
14. The Defendants agree that if they violate any agreement contained herein, the United States may declare this Plea Agreement null and void and Defendants, PATE AND PATE ENTERPRISES, INC. and PATE AND PATE LLC and its employees will thereafter be subject to prosecution for any criminal violation including but, not limited to, any crimes in or related to the Information filed in this case, as well as, perjury and obstruction of justice. In the event that Defendants, PATE AND PATE ENTERPRISES, INC. and PATE AND PATE LLC violate the provisions of this Plea Agreement, they understand that any later prosecution may be premised upon any information, statements or testimony provided by them and that such information, statements, or testimony, and all leads derived therefrom, may be used against them.

Respectfully submitted,

MATTHEW D. ORWIG
UNITED STATES ATTORNEY

By: 

Wes Rivers

Assistant U. S. Attorney

Dated: 11/11/04

By: Steve Pate

Steve Pate, President

Pate and Pate Enterprises, Inc. &

Pate and Pate LLC

Defendants

Dated: 10/25/04

By: Michael J. Hinton

Michael J. Hinton

Attorney for Defendant

Dated: 10/25/04